IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2614 of 1992
WITH
SPECIAL CIVIL APPLICATION NO 2619 of 1992
WITH
SPECIAL CIVIL APPLICATION NO 3993 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JUNAGADH MUNICIPALITY

Versus

STATE OF GUJARAT

Appearance:

In all matters :

MR JAYANT PATEL for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 09/02/2001

ORAL COMMON JUDGEMENT

1. These three petitions raise identical points which are urged by the petitioner - Junagadh Municipality seeking a direction on the State Government to pay to the petitioner Municipality the grant in respect of dearness allowance for the employees who were appointed and confirmed under the awards of the Tribunal dated 5/10/1989.

2. The main grievance raised on behalf of the petitioner is regarding the validity of condition no. 4 of the resolution dated 23/10/1990 at Annexure-BB to the petition which provided that grant shall not be admissible for the posts and pay-scales secured by the Municipality under the awards or settlements under the Industrial Disputes Act, even though the same were approved by the competent authority. Thus, even if the posts are required to be filled up and benefits given pursuant to the award of the Industrial Tribunal, the Government would not pay the grant. According to the petitioner such a condition was unjust, arbitrary and violative of Article 14 of the Constitution as regards the treatment that may be meted out to the employees manning the same post. The learned counsel for the petitioner also pointed out from para. 13 of the petition that in similar case of Mehsana Municipality respondents were directed to pay the grant for dearness allowance by order dated 17/11/1973 passed in Special Civil Application No. 707 of 1973. Similarly the Veraval Patan Joint Municipality was also directed by the Court by order made in Special Civil Application No.1662 of 1978 to pay the grant for dearness allowance.

3. It appears that the State Government has not taken into account various aspects which have been pointed out in the petition in support of the petitioner's claim that grant should be admissible for the posts which are required to be filled in by the Municipality under compulsion of an award. Prima-facie it does appear that if the grant is admissible in respect of the posts already sanctioned and approved by the State Government, it should ordinarily be made admissible even in respect of the additional posts which are sanctioned pursuant to the awards of the Tribunal. It would, however, be for the State Government to apply its mind to all the aspects of the matter and consider the objections of the petitioner against condition no. 4 of the resolution dated 23/10/1990 and other consequential aspects.

The learned A.G.P. appearing for the respondent no. 1 states that the objection raised by the petitioner

in these three petitions against condition no. 4 of the said resolution and other consequential aspects will be duly considered by the State Government and a proper decision will be taken within two months from today after hearing the Municipality. It will be open for the Municipality to put-forth its case in support of its claim before the State Government. If any order is made against the Municipality, then it will be open for the Municipality to challenge the same in accordance with law. Subject to this direction all the petitions are rejected. Rule is discharged in each of them with no order as to costs.

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* Pansala.